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13
14 IN THE UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 IVAN SIGMOND

20 Defendant.

21 CASE NO. 1:20-CR-00160-DAD-BAM

22 STIPULATION REGARDING EXCLUDABLE
23 TIME PERIODS UNDER SPEEDY TRIAL ACT;
24 FINDINGS AND ORDER

25 CURRENT DATE: April 13, 2022

26 TIME: 1:00 p.m.

27 COURT: Hon. Barbara A. McAuliffe

28
17 This case is set for status conference on April 13, 2022. On May 13, 2020, this Court issued
18 General Order 618, which suspended all jury trials in the Eastern District of California until further
19 notice, and allows district judges to continue all criminal matters. Under General Order 618, a judge
20 “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with
21 reference to the court’s prior General Order 611 issued on March 17, 2020 . . . with additional findings
22 to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020).
23 In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the
24 discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of
25 the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7
26 (E.D. Cal. May 13, 2020). This and other General Orders were entered to address public health
27 concerns related to COVID-19 (for example, General Order 614—recently extended by General Order
28 640).

1 Although the General Orders address the district-wide health concern, the Supreme Court has
 2 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
 3 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
 4 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
 5 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 6 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 7 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally
 8 or in writing").

9 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 10 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 11 justice continuances are excludable only if "the judge granted such continuance on the basis of his
 12 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 13 the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 14 unless "the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 15 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 16 and the defendant in a speedy trial." *Id.*

17 The General Orders exclude delay in the "ends of justice." 18 U.S.C. § 3161(h)(7) (Local Code
 18 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 19 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 20 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 21 following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 22 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 23 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 24 September 11, 2001, terrorist attacks and the resultant public emergency). The coronavirus is posing a
 25 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

26 In light of the societal context created by the foregoing, this Court should consider the following
 27 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 28

1 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
2 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
3 pretrial continuance must be “specifically limited in time”).

4 **STIPULATION**

5 Plaintiff United States of America, by and through its counsel of record, and defendant IVAN
6 SIGMOND, by and through defendant’s counsel of record, David Balakian, hereby stipulate as follows:

- 7 1. By previous order, this matter was set for status on April 13, 2022.
- 8 2. By this stipulation, defendant now moves to continue the status conference until June 22,
9 2022, and to exclude time between April 13, 2022, and June 22, 2022, under Local Code T4.

10 3. While the parties anticipate that the case may resolve without a trial, this is not yet a
11 certainty. If defendant ultimately does not enter a guilty plea and decides to proceed to trial, the parties
12 agree and stipulate, and request that the Court find the following:

13 a) The government asserts the discovery associated with this case includes reports,
14 photographs, and recordings; discovery has been provided to Attorney Balakian and/or made
15 available for review.

16 b) The parties are in ongoing discussions regarding a possible resolution in this
17 matter. Counsel for the defendant requests additional time *before* the Court rules on his pending
18 motion (regarding disclosure of a search warrant affidavit – Doc. 35) so that he may continue to
19 have discussions with his client about a possible resolution in this case.

20 c) Counsel for defendant desires additional time to consult with his client, to review
21 the current charges, to conduct investigation and research related to the charges, to review and/or
22 copy discovery for this matter, to discuss potential resolutions with his client, to prepare pretrial
23 motions, and to otherwise prepare for trial.

24 d) Counsel for defendant believes that failure to grant the above-requested
25 continuance would deny them the reasonable time necessary for effective preparation, taking into
26 account the exercise of due diligence.

27
28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 e) The government does not object to the continuance.

2 f) Based on the above-stated findings, the ends of justice served by continuing the
3 case as requested outweigh the interest of the public and the defendant in a trial within the
4 original date prescribed by the Speedy Trial Act.

5 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
6 et seq., within which trial must commence, the time period of April 13, 2022 to June 22, 2022,
7 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4],
8 because it results from a continuance granted by the Court at defendant's request on the basis of
9 the Court's finding that the ends of justice served by taking such action outweigh the best interest
10 of the public and the defendant in a speedy trial.

11 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
12 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
13 must commence.

14 IT IS SO STIPULATED.

15 Dated: April 8, 2022

PHILLIP A. TALBERT
Acting United States Attorney

17 /s/ JESSICA A. MASSEY
18 JESSICA A. MASSEY
Assistant United States Attorney

19 Dated: April 8, 2022

20 /s/ DAVID BALAKIAN
21 DAVID BALAKIAN Counsel
for Defendant IVAN SIGMOND

ORDER

IT IS SO ORDERED that the status conference is continued from April 13, 2022, to **June 22, 2022, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. In the interest of justice, the court continues the Motion to Unseal (Doc. 35) to **June 22, 2022, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: April 11, 2022

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE